UNCONSTITUTIONAL.

Important Decision of the Federal Court at Topeka.

The State Prohibitory Law, So Far as Original Packages Are Concerned, Unconstitutional—Further Legislation Needed.

TOPEKA, Kan., Oct. 17.—The Circuit Court of the United States filed its opinion this morning touching the constitutionality of the Prohibitory law of Kansas. The decision is very long, and it declares the Prohibitory law of the State unconstitutional, because of its passage prior to the passage of the Wilson bill by Congress.

The decision therefore leaves the situation in Kansas the same as before the passage of the Wilson bill.

In rendering their opinion Judges Philips and Foster said:

Two principal questions have been discussed by counsel in this case. First, as to the constitutionality of what is known as the Wilson bill, passed by Congress on the 8th day of August, 1890; and, second, whether if said bill be valid the existing Prohibitory law of the State of Kansas applies, or is it needful that additional legislation should be had by the State to bring into action in the State the provisions of the Wilson bill.

Under the view taken of the last question we deem it unnecessary to enter upon any discussion of the first proposition as with or without the constitutionality of the Wilson bill the result to the petitioner is the same.

The first section of the Prohibitory law of Kansas is as follows: "Any person or persons who shall manufacture, sell or barter in spirituous, malt, vinous, fermented or other intoxicating liquors shall be guilty of a misdemeanor," etc. (Gen. Stats. 1889. Sec. 2321.)

Under the decision of the Supreme Court of the United States, in Leisy vs. Hardin, 135 U. S. 100, this statute, in so far as it attempted to prohibit the sale of intoxicating liquors imported into the State and sold by the importer or his agent, in the original package, was inoperative and void, being in conflict with section three, article one, of the Federal Constitution which places the power exclusively in Congress to regulate commerce with foreign nations and among the States.

Incident to this decision, Congress on the 8th day of August, 1890, enacted the Wilson bill, which declares "that all fermented, distilled or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall, upon arrival in such State or Territory, be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

It is not claimed nor pretended by the attorneys for the State that the petitioner previous to the passage of the Wilson bill was engaged in a business violative of any law of the State; but they do claim that immediately after the passage of said bill by Congress, the petitioner's business became and is a violation of the Prohibitory law of the State. So that the proposition stands in this form: On the 7th day of August, 1890, sales made by the petitioner were permissible and lawful under the Constitution of the United States, the Prohibitory law of the State to the contrary notwithstanding; therefore, if on the 9th day of August, 1890, the same act of the defendant is taken from under the protection of the Federal Constitution, and is a violation of the same Prohibitory law of the State, the conclusion would seem to be inevitable that this changed condition of liability is because of the enactment of Congress on August 8, 1890. In brief the contention of the State is that the act of Congress enlarged the scope and operation of the act of the State Legislature, making that which was a legitimate business one day a crime the next, not under any law of Congress, but against the law of the State. There is nothing in the wording of the act implying that Congress assumed such a power or intended to give such effect to this enactment.

At the time Congress passed the Wilson bill it was well known and recognized that the Supreme Court had decided that such a State Prohibitory law was void, in so far as the dealer in imported liquors in the original package was concerned. In other words, there was no law and and could be no law in existence making such business a crime. It can not be assumed that Congress desired to introduce into the present police laws of the State an article or subject hitherto not included by those laws. How could Congress know that the people of all or any of the States on March 8, 1887, desired to have such object or article embraced in their police laws. The contention of counsel for the State is that it is for the several States themselves to determine the scope and purpose of their police laws, and Congress has not undertaken to arrogate to itself any power or control over that subject.

In employing the word "shall be the operation of the laws of the State" Congress did not use them in a mandatory but in a permissive sense. The most ardent and enthusiastic advocate of a strong central government would spurn the idea that Congress assumed to dictate or convey a mandate to the several States in the matter of the exercise of their police power.

On the contrary, the Wilson bill left it to the free and untrammeled action of the several States to determine whether they would or would not include within their police laws this particular article of commerce. Every State in the Union probably has upon its statutes some police regulation of the traffic in intoxicating liquors. These statutes as a rule exempt from their operation, either in express terms or implication, imported liquors and their sale in original packages. In some of the States the exception was expressed, as in the Iowa Prohibitory law of 1855 and the old New York law of 1857, and in all cases where not expressly reserved the law of the land as declared by the supreme judicial tribunal supplied the exception, thus indicating the general consensus that hitherto it was not recognized as among the police powers of the State to regulate or interdict among the States the traffic in imported liquors.

The decision in Leisy vs. Hardin, supra, but emphasizes this fact and principle. The Prohibitory law of the State of Kansas, where it touched upon Inter-State commerce, was no law at all, at the time of this enactment nor since. Judge Cooley says:

"The term, unconstitutional law, as employed in American jurisprudence, is a misnomer and implies a contradiction. That enactment which is opposed to the Constitution being in fact no law at all." Cooley on Constitutional Limitations 5. Again at page 187 this same author says: "When a statute is adjudged to be unconstitutional, it is as if it had never been. Rights can not be built up under it; contracts which depend upon it for their construction are void; it constitutes a protection to no one who has acted under it, and no one can be punished for having refused obedience to it before the decision was made. And what is true of an act void in toto, is true also as to any part of an act which is found to be unconstitutional and which consequently is to be regarded as having never at any time been passed and in legal force."

How then can the act of Congress in question have the effect and operation claimed for it by the attorneys for the State. For it must be kept in mind that a legislative act in conflict with the Constitution is not only illegal or voidable, but it is absolutely void.

For illustration, section 10 of article 1 of the Federal Constitution declares that "No State shall pass any bill of attainder, ex post facto law, or law imparting the obligation of contracts." Suppose a State should pass any of these prohibited acts and after its passage the Constitution should be amended by the assent of the requisite number of States, and the foregoing section dropped altogether, so that there was no longer any restriction on the States in this particular. Would any one contend that a prior enactment in the face of the Constitution dead at the time of its enactment for the want of life giving power, would at once arise from its tomb and become a living, actual, lawful thing?

Suppose the Legislature of Kansas, in these times of imputed financial distress, should enact a law providing that in all cases of judicial sales of real estate hereafter made on foreclosure of mortgages there should be a stay of execution for one year after judgment. Such a law would seem fair on its face, and would be in general terms like that of the Prohibitory law of the State. The courts unquestionably would hold that as to judgment rendered or mortgages executed prior to such enactment the statute was inoperative and void, because it impaired the obligation of contracts, and was in violation of section ten, article one, of the Constitution; although it might be held to be a valid law as to subsequent contracts, good in part and bad in part. Now, suppose the Constitution should be amended and section ten should be excluded, could it be maintained that this act of the Legislature would become a valid law as to prior contracts without further legislation?

Where is the distinction between the supposed case and the case at bar? In either case the Legislature undertook to legislate on a matter forbidden to it by the Constitution; in the one case prohibited in terms and in the other taken away and denied to it by a delegation of all power over the subject matter to Congress.

If the constitutionality of the Wilson bill is to be upheld upon the theory, as claimed by its advocates in the debate thereon in the Senate of the United States and in the argument at this hearing, that Congress, in the exercise of its power to regulate commerce among the States and with foreign nations, simply decided or declared that its jurisdiction should be confined to certain subjects-matter of commerce, or that certain subjects matter and things which may be considered subjects of commerce, should thereafter be excluded from its jurisdiction under the commercial clause of the Constitution, and the traffic in intoxicating liquors should thereafter be classified and remitted to the subjects with the police power of the State, such a law under every rule of construction must be prospective in the operation. And it must further be conceded that as the right of the State to treat such an article of commerce, as subject to laws passed by the State in the exercise of the police power, comes for the first time and alone from the enactment of the Wilson bill, until the State passes a law thereafter forbidding such traffic, it has never exercised the power or the discretion, call it what you may, lodged in it by Congress. From this conclusion we see no logical escape.

The operation and scope of criminal laws should not be enlarged by implication, but they should be strictly construed. And where there is any well founded doubt as to any act being a public offense, especially one not malum in se, it should not be declared such, but should rather be construed in favor of the liberty of the citizen. It follows that the petitioner is entitled to be discharged, and it is accordingly so ordered.

SEALS DISAPPEARING.

Slow Diplomatic Negotiations Likely to Result in Their Being Wiped Out.

WASHINGTON, Oct. 17.—Official reports received at the Treasury Department from Special Agent Goff, in charge of the seal island fisheries, are of a most discouraging character. They state that poaching has been carried on this season to such an extent as actually to threaten the life of the seal industry as a source of revenue to the United States in the future and, if persisted in to the same extent next season, to endanger its very existence. Because of the alarming extent to which poaching has been carried on the number of seals allowed to be captured by the North American Commercial Company, which holds a lease of St. George and St. Paul islands, was limited by the Treasury Department to 20,000 this season, though their contract called for 60,000.

It is estimated by the Treasury Department officials familiar with the poaching operations in the Behring sea that fully 60,000 seals have been captured unlawfully this season. These seals are shot in the open ocean and not more than one in six shot is secured. This would represent a slaughter of 300,000 seals which have been wantonly killed and whose skins have never been recovered. It is not thought that the seal can long withstand this slaughter, as the seals are killed indiscriminately, without regard to age, sex or breeding season.

At this time only one revenue cutter, the Bear, is at the Seal islands. The Rush arrived yesterday at San Francisco and the Corwin is now at Port Townsend. Several naval vessels are still in the region of the Seal islands, but pending diplomatic negotiations between the United States and Great Britain in regard to the fisheries question generally, both on the Atlantic and Pacific coasts, little aggressive action has been taken by naval officers for fear of further complicating the situation. In the meantime the seals are fast disappearing from the Behring sea.

Another Louisville Storm Victim.

LOUISVILLE, Ky., Oct. 18.—Mrs. Sarah Wahle, vice-protector of Jewel Lodge, Knights and Ladies of Honor, died yesterday from the effects of injuries received from the wreck of Falls City Hall in the cyclone last spring. She is the seventy-second victim of the cyclone.

THE CORN CROP.

Condition of the Corn Crop as Shown By a Careful Examination.

CHICAGO, Oct. 22.—The Farmer's Review to-day says: "A careful examination of estimates furnished by our correspondents reveals the fact that the corn crop is turning out somewhat better than was expected. The crop in Michigan and Wisconsin is larger than that of last year, and the returns in Minnesota and Dakota are almost as large as in 1889. Other States, however, show a considerable shortage. This is most marked in Kansas and Nebraska where the crop will be less than one-half that of 1889. In several counties in those States corn is a total failure; at least it is poor in quality and only fit for fodder. Reports from Illinois, Indiana, Ohio, Kentucky, Missouri and Iowa state that while the ears are small, owing to midsummer drought, as a rule they are well filled, sound and thoroughly matured, grading No. 1 and No. 2. It is probable that about 75 per cent. of the product grown in those six States will be marketable."

The Review estimates the average yield in Illinois to be 28 bushels an acre; in Indiana, 28; Ohio, 31; Kentucky, 23; Missouri, 28; Kansas, 14; Wisconsin, 40; Michigan, 47; Iowa, 30; Nebraska, 18; Minnesota, 30; Dakota, 23. The crop in the twelve States named is thus estimated: Illinois, 224,628,712; Indiana, 105,038,192; Ohio, 92,229,123; Kentucky, 56,920,446; Missouri, 184,580,012; Kansas, 98,247,058; Wisconsin, 41,487,920; Michigan, 41,836,311; Iowa, 268,454,880; Nebraska, 74,484,666; Minnesota, 22,382,010; Dakota, 19,592,044; total, 1,229,888,374. Deducting from the above gross product the large percentage of unmerchantable corn, the Review's estimate of the total marketable corn in the twelve States named is 895,935,253 bushels. According to the October report of the Department of Agriculture the condition of the corn crop in the remaining States not covered by this report is about 85 per cent. of an average. The Government reports show that in 1887 the crop in these States amounted to 534,118,000 bushels, in 1888 to 525,275,000 bushels, and in 1889 to 536,760,000 bushels.

WORK OF MISCREANTS.

A Train on the Milwaukee Wrecked and the Fireman Killed.

EXCELSIOR SPRINGS, Mo., Oct. 22.—A local freight train on the Chicago, Milwaukee & St. Paul was wrecked between this city and Mosby about seven o'clock yesterday morning, in which Fireman Wright was instantly killed and Brakeman E. C. McClintock received a broken leg.

Some one had extracted the spikes and spread the rails on a trestle, which caused the wreck. It is supposed that the trap was set for the early westbound passenger train and that the object was to kill or otherwise detain persons who were going to Liberty to appear as witnesses in some important trials pending in the circuit court. The engineer jumped from one side of the cab and the fireman from the other when they saw the accident was inevitable. A falling car struck the fireman and crushed him to death, but the engineer escaped unhurt. The entire train was ditched and many of the cars smashed into splinters. All other trains were delayed and the mail and passengers transferred early in the afternoon, but the wreck is not cleared up at this hour. The damage to the railroad will be heavy. No clew as to the names of the wreckers has been made public.

BEYOND A DOUBT.

New Orleans Police Sure of Having the Assassins of Chief Hennessy.

NEW ORLEANS, Oct. 22.—Acting Chief of Police Journee and Chief of Detectives Malone said yesterday the work of the police in the Hennessy assassination case was about finished; that the guilty parties were under arrest beyond a doubt, and that evidence to substantiate this was already in possession of the officers.

There may be a few more unimportant corroborative facts picked up, but the police are satisfied with the evidence they now have. Next Tuesday is the day fixed upon which the detectives will be ready to go into the examining trial of the fifteen men now under arrest.

Four of these are charged directly with the murder, while the others are charged with being accessories, both before and after the fact.

WHITE HOUSE DECORATION.

President Harrison Will Take a Pleasure Trip During the Repairs.

WASHINGTON, Oct. 22.—The White House has been turned over to the decorator's hands, and the odor of paint and fresh varnish is everywhere perceptible about the executive mansion. The workmen have invaded nearly every room in the house, and the President has been obliged to gather up his papers and move nearly every day for a week past. Yesterday he occupied the Cabinet room. Mr. Harrison has concluded to go away until the renovators have completed their labors. He will, it is said, take a trip into the wilds of Maryland, where he can get a few shots at the juicy canvas back. After spending a few days' shooting it is thought he will take a trip as far west as Indianapolis, reaching there about election day. These plans may be changed, however, but it is learned that the President is anxious to be at home in season to cast his ballot in the coming election.

REPUBLICAN ADDRESS.

The Chairman of the State Central Committee Issues an Address to the People.

TOPEKA, Oct. 20.—The Republican State Central Committee has issued the following circular letter:

HEADQUARTERS
REPUBLICAN STATE CENTRAL COMMITTEE
TOPEKA, Kan., Oct. 18, 1890.

To the People of Kansas:

The Democratic theory is that whisky, like slavery, is protected by the Constitution of the United States. They claim that the Wilson bill is unconstitutional. They claim that the statutes of the State prohibiting the manufacture, sale and use of intoxicating liquors are without life and vigor, because not re-enacted since the passage of the Wilson bill. A Democratic court has just decided the latter proposition in their favor. Whisky, like slavery, finds its last refuge in a Democratic interpretation of the Constitution of our fathers. The recent exposition of the law by the Federal judges narrows the issue in this campaign down to a struggle between prohibition and free whisky.

The voters in the State who have been impressed with the idea that a revenue should be derived from this unholy traffic in liquor, find that even this poor consolation is denied them by the Federal judiciary.

The sweeping terms of the opinion allow the original package saloon to run with open doors in every city, town and village in the State, without license, without revenue, without local interference, and without judicial control. The same court has forbidden the sheriff and county attorney of Shawnee County to make any investigation as to whether or not the original package saloons are conducting their nefarious business in accordance with the judicial opinions that create them. The people of this State have their hands tied by these infamous decisions, and the rumsellers fondly imagine that they can so manage, control and debauch the voters of this State on the day of the election as to prevent the election of members of our next Legislature who will re-enact our present prohibitory statutes. They will now change their tactics. You will hear but little more about resubmission. Their scheme will now be to elect a House that will prevent all legislation to meet the demands of the Federal edict. They do not now want resubmission. The Federal judges have given them a "better thing." They will now seek to continue "free whisky" for all time to come. They will not meet the issue boldly. They will deny that they are for free whisky. They will conduct a "bushwhacking" campaign in every Representative district. They will resort to every expedient to deceive voters as to the true issue.

The rumsellers and their allies, the Democ-resubmissionists, will now exert every effort and use every means to elect members to the next House of Representatives who will vote against and prevent the re-enactment of the statutes prohibiting the manufacture, sale and use of intoxicating liquors; and for years subject the people to all criminal effects of free, unlicensed and unbridled whisky. The people must demand of every candidate for member of the House of Representatives an unwavering adherence to the declarations and cardinal principles of the Republican party: to the interests of the home; to the protection of the children of the State, and to the cause of temperance. The vital issue of this campaign is now made so clear by the declarations of the Democratic and Resubmissive conventions, and emphasized by a judicial opinion, that none but the most stupid can fail to recognize its significance, or determine its meaning. It means rum holes without legal restraint, against wholesome laws controlling and prohibiting the manufacture, use and sale of intoxicating liquors. It is the issue of home and temperance against whisky, lawlessness and crime.

The gallant Republicans of Kansas must fight this battle alone. It is the only party organization in the State that can be relied on to protect the home of the citizen against the vile influences of the rumsellers. No material aid can be expected from the People's party. The State Alliance was in session at Topeka when the Federal judges rendered a decision in favor of free whisky, and five times they suppressed a resolution denouncing that infamous decision. The Republican party of the State, true to its convictions, and in accordance with the law of its origin, naturally assumes the guardianship of the dearest and best interests of this State.

The Republican party is for prohibition and against whisky in any form or disguise. We had rather be right on this great question than win a victory. If success comes to our banners, it must come hand-in-hand with the most vigorous beneficial prohibitory legislation. The election of Republican State officers and a Republican Legislature means prohibition, pure and simple. The election of the Democ-resubmission ticket means free whisky.

Voters, choose between them!

By order of the Republican State Central Committee. W. J. BUCHAN, Chairman.
JOHN H. SMITH, Secretary.

SUDDENLY REMOVED.

Governor Humphrey Dismisses the New Leavenworth Police Board and Appoints Another.

TOPEKA, Kan., Oct. 21.—Governor Humphrey removed the board of police commissioners for Leavenworth, which was appointed last week, and named an entirely new board. The new commissioners are: William Fairchild, who was on the Anthony board and who is made president; P. Magahey, who was city marshal under the old board and who is made secretary; Dr. A. B. Callahan, who is the Democratic member.

The change was made because of the action of the board yesterday in removing City Marshal Magahey and appointing Fred Willard, secretary of the Resubmission Club, to that position. This action, the Governor thought, showed clearly that the board was not in favor of a rigid enforcement of the Prohibitory law.

The Governor says he was imposed upon in naming the other board, having been informed that at least two of the gentlemen were Prohibitionists. The board appointed to-day is composed of three radical Prohibitionists and their instructions will be to enforce the Prohibitory law to the letter. Governor Humphrey is in Phillips County, but the commissions were issued to-day by Private Secretary Smith upon instructions from the Governor by telegraph.

Expert Duty on Tea.

LONDON, Oct. 22.—A Shanghai dispatch states that Inspector-General Hart, head of the Chinese customs, has suggested to the Imperial Government the abolition of the export duty on tea, as a measure of protection to the Chinese tea trade, now threatened by Japan and India.

KILLED HIMSELF.

Suicide of A. B. Mullett, Formerly Supervising Architect of the Treasury.

WASHINGTON, Oct. 21.—A. B. Mullett, one of the best known architects of this city and for many years Supervising Architect of the Treasury Department, shot and killed himself at his residence last evening.

Mr. Mullett had been in poor health for a long time, suffering from rheumatism and other complaints, but it is thought that financial trouble was the chief cause of his act.

Last evening Mr. Mullett was feeling poorly and his wife went down stairs to get him some beef tea. She had hardly reached the foot of the stairs when she heard a pistol shot, and, rushing back, found her husband gasping for breath with blood oozing from a wound in his head. A doctor was immediately summoned, but Mr. Mullett died in a few minutes.

Mr. Mullett was fifty-six years old and was very well known all over the country. He designed many of the public buildings that have been erected in different cities, among them being the New York City post-office and the imposing State, War and Navy Department buildings in this city. Since his retirement from the office of Supervising Architect of the Treasury he had devoted most of his time to professional business in Washington. He leaves a family of five children, four of whom are in Washington and one in Kansas City. His mother, two brothers and two sisters also reside in Kansas City.

Mr. Mullett had a severe case of the grip last winter, from which he still suffered. For the past few months he had been at times despondent and gloomy. He had built several houses recently that he could not dispose of and this preyed on his mind.

SHOT TO KILL.

Judge Burgess Had That Intention, But Failed to Hit the Editor of the Kansas City Sunday Sun.

BROOKFIELD, Mo., Oct. 21.—Yesterday afternoon Judge G. D. Burgess, of Linneus, one of the best known men in the State, attempted to shoot H. L. Preston, editor of a Kansas City weekly sheet, while the latter was standing at the counter in the Wheeler Savings bank.

The judge fired two shots, neither of which took effect, but one ball was a close call for Mr. J. R. Greenalgh, so he says, he having heard it go past his head as he was standing close to Preston at the counter.

The trouble grew out of the scandalous articles that had been published in Preston's sheet about Judge Burgess. The latter had become highly excited over it and it is thought by his friends that he hardly realized what he was doing.

Judge Burgess says he shot with the intention of killing Preston and regrets that he came so near hurting an innocent man.

The affair is made more prominent because of the standing of Judge Burgess, a citizen of Missouri. He was in the race for the nomination for Supreme Judge at the Democratic State convention at St. Joseph last June and was beaten by Judge Gantt.

MORE PUBLIC LANDS.

The Cheyennes and Arapahoes Sign a Treaty Which Will Add Three Million Acres to the Public Domain.

FORT RENO, I. T., Oct. 21.—Yesterday was the eighth day since the powwow between the Cherokee Commission and the Cheyenne and Arapahoe Indians ended and the Indians accepted the proposition and began signing the contract and yesterday marked the triumph of the Commission.

The first day nine signed. This included the chiefs, head men and their followers who happened to be about the agency.

The chiefs then sent out couriers advising their bands of their action and asking them to come in and sign. Bands varying from twenty-six to seventy-five have arrived each day until 413 signatures have been secured. Of these seventy-two are widows and heads of families and the remaining 341 are male adults.

There are of the 3,360 Indians on the reservation 610 male adults, so that a majority has been secured and the contract is completed. When it was known by the chiefs at the council that a majority had signed they demonstrated their satisfaction in the most approved manner of the white man.

The reservation contains 3,000,000 acres and extends from Oklahoma to the Panhandle of Texas. El Reno and Kingfisher are jubilant over the success of the negotiations, inasmuch as extensive farming counties will become tributary to these towns.

A Love Tragedy.

CHANTON, Iowa, Oct. 21.—On Saturday afternoon Elmer Oliver, a young man of twenty-one years, arrived here from Kansas. Becoming intoxicated, he hired a livery team and drove to the little town of Freedom, twelve miles from here.

He immediately went to the farm house of Mr. Tuttle and requested to see his daughter, with whom he was in love.

After the two had conversed for a few minutes, the young man requested the girl to marry him. She refused, saying she was too young.

Oliver then drew a revolver and shot the girl through the temples, causing instant death. He then turned the weapon on himself and fired a ball through the head in exactly the same place he had shot the girl. He lived in an unconscious condition, until this morning, when he died.